

Superfund/Oil Program Implementation Manual FY 02/03

Appendix C: Enforcement

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Appendix C Enforcement

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C.A FY 02/03 TARGETS AND MEASURES FOR ENFORCEMENT

C.A.1 OVERVIEW

The Superfund Comprehensive Accomplishments Plan (SCAP) is used by the Assistant Administrator for the Office of Solid Waste and Emergency Response (AA OSWER), the Assistant Administrator for the Office of Enforcement and Compliance Assurance (AA OECA), and senior Superfund managers to monitor the progress each region is making towards achieving the Government Performance and Results Act (GPRA) annual performance goals. In addition, SCAP will continue to be used as an internal management tool to project and track activities that contribute to these GPRA goals and support resource allocation. The program will set national goals based on historical performance and performance expectations within a limited budget for the performance goals in GPRA and track accomplishments in the activities contributing to those goals. Regions should continue to plan and report accomplishments in WasteLAN as they have traditionally.

To more clearly reflect the relationship between GPRA and the SCAP process, program targets and GPRA performance goals are defined as follows:

- **GPRA Annual Performance Goals** are a subset of the overall planning and budgeting information that has traditionally been tracked by the Superfund program offices. They are numerical goals that are established nationally prior to the start of the operating year. For example, regions are encouraged to maintain or exceed 70% or greater PRP remedial action starts at non-Federal facility Superfund sites.
- **Measures** are activities deemed essential to tracking overall program progress. There are two types of measures: GPRA measures and program measures. GPRA measures track and/or project the number of actions that occur through the year (accomplishments) and are used to evaluate program progress in support of GPRA. Program measures are used to track and/or project the number of actions that each region expects to perform during the year using anticipated resources; for example, the number of PRP search starts. A subset of these program measures will be targeted program specifically for work planning purposes. They are identified with a T in Exhibit C.1.

This appendix includes the enforcement Measures of Success that were devised by HQ in consultation with the regions to address Enforcement reforms. These measures have been incorporated into the enforcement program as routine ways of doing business. With these measures, the program can produce a more complete picture of enforcement-related successes and accomplishments at Superfund sites.

In addition to the measures in this manual, the regions should continue to provide information in WasteLAN regarding Potentially Responsible Parties (PRPs) as requested in OSRE memorandum dated July 26, 1999, and Prospective Purchaser Agreements (PPAs) as requested in OSRE's memorandum dated December 6, 1999 entitled "Tracking the Prospective Purchaser Agreement Process in CERCLIS/WasteLAN." Compliance Monitoring should continue as requested in OSWER directive 9872.50. Regions should also use the WasteLAN Environmental Justice Indicator to identify potential Environmental Justice Sites.

EXHIBIT C.1 ENFORCEMENT ACTIVITIES

FY 02/03 Enforcement Performance Measures

The following table represents the FY 02/03 Enforcement Performance Measures. This table is only relevant for Appendix C: Enforcement.

ACTIVITY	GPRA	EPA SR. MANAGERS	INQUIRIES: CONGRESS /GAO/OIG/ OMB	RESOURCE WORK PLANNING*
Potentially Responsible Party (PRP) Search Starts				P
PRP Search Completions				P
Section 104(e) Referrals and Order Issued				P
Issuance of General Notice Letters (GNLs)				P
Issuance of Special Notice Letters (SNLs)				P
Expanded Site Inspection/Remedial Investigation/Feasibility Study (ESI/RI/FS) Negotiation Starts				P
Remedial Design/Remedial Action (RD/RA) Negotiation Starts (NPL & Superfund Alternative)		✓		P
Completion or Termination of Negotiations for RD/RA (NPL & Superfund Alternative)		✓		P
Completion or Termination of Negotiations for Cleanup (RD/RA, Removals, and Other)		✓		T
Percentage of Remedial Action Starts Initiated by PRPs at non-Federal Facility NPL & Superfund Alternative Sites	✓	✓	✓	
Total Response Commitments (Including Dollar Value)		✓		P

* T = Program Target

P = Program Measure

ACTIVITY	GPRA	EPA SR. MANAGERS	INQUIRIES: CONGRESS /GAO/OIG/ OMB	RESOURCE WORK PLANNING*
Enforcement Settlements/ Instruments for RD/RA/Long Term Response (LR) (Including Dollar Value)		✓		P
<i>De Minimis</i> Settlements and Number of Parties	✓ (reporting)	✓	✓	T
Cashout Settlements		✓		P
Section 106, 106/107, 107 Case Resolution		✓		P
Issuance of Demand Letter				P
Total Cost Recovery Settlements (Including Dollar Value)	Report the value of costs recovered	✓		P
Past Costs Addressed \geq \$200,000 Via Settlements, Write-Offs, or Referrals	✓	✓	✓	
Recoverable Past Costs That Have Been Addressed by Program to Date Via Settlements, Write-Offs, or Referrals		✓		P
Number and Amount of CERCLA Penalties Assessed		✓		P
Number and Amount of CERCLA Supplemental Environmental Projects (SEPs)		✓		P
Compliance Monitoring: Noncompliance with Active Enforcement Instrument for Response and Enforcement Action Taken		✓		P

* T = Program Target

P = Program Measure

ACTIVITY	GPRA	EPA SR. MANAGERS	INQUIRIES: CONGRESS /GAO/OIG/ OMB	RESOURCE WORK PLANNING*
Use of Alternative Dispute Resolution (ADR)		✓		P
Number of Settlements Where EPA Settled Based on Ability-to-Pay Determinations		✓		P
Prospective Purchaser Agreements (PPAs) Assessed and Finalized	✓ Reporting	✓	✓	T (Assessed) P (Finalized)
Issuance of Comfort/Status Letters		✓		P
Orphan Share - EPA Offer and Compensation	✓ (Offer/ Reporting)	✓		T (Offer) P (Compensated)
Issue Cleanup Orders to Parties in an Equitable Manner		✓		P
<u>De Micromis</u> Settlements and Number of Parties		✓		P
PRP Oversight Administration		✓	✓	T
The number of enforcement actions taken at NPL sites to have PRPs conduct or participate in response activities compared to the total number of sites on the NPL. The percentage and estimated value of PRP commitments to response activities at non-Federal facility sites on the NPL		✓		
The total value of cost recovery settlements and judicial actions achieved, and past costs considered recoverable		✓		

* T = Program Target

P = Program Measure

ACTIVITY	GPRA	EPA SR. MANAGERS	INQUIRIES: CONGRESS /GAO/OIG/ OMB	RESOURCE WORK PLANNING*
The amount of money EPA has collected from PRPs compared to the total amount achieved in cost recovery settlements and judicial actions		✓		
The estimated amount of money PRPs have committed legally to site cleanup compared to the total amount of funds obligated by Superfund enforcement program		✓		
Settlements Designating Deposits to Special Accounts		✓	✓	P
Deposits into Special Accounts		✓		P
Settlements Designating Disbursements from Special Accounts to PRPs		✓	✓	P
Disbursements from Special Accounts for Response Actions		✓	✓	P

T = Program Target

P = Program Measure

NOTE: Accomplishments are pulled from WasteLAN on a quarterly basis. Measures are planned and reported quarterly.

C.A.2 TARGETS AND MEASURES FOR BASELINE ENFORCEMENT

Note: WasteLAN coding requirements contained in the definitions are only for key data elements. For a full list of requirements and suggested data elements, see the *SCAP/Oil Coding Guide* for the current FY.

Criteria for Credit of Enforcement Activities at Superfund Alternative Sites

For the purposes of this section, references to enforcement activities (i.e. RD/RA negotiation starts and completions, PRP-lead Remedial Action Starts) at Superfund Alternative sites apply only to sites that the region has determined would achieve a Hazard Ranking System (HRS) score greater than or equal to 28.5 or meet the qualitative criteria outlined in SACM Program Management Update Volume 1, Number 4 “Assessing Sites Under the Superfund Accelerated Cleanup Model” (Publication 9230.1-05I) ¹. Such response actions must be carried out in a manner not inconsistent with the National Contingency Plan (NCP). Proposed NPL sites are included in this category. Regions

¹Criteria referenced include: 1) Private drinking water supplies are contaminated with a hazardous substance; 2) Numerous private wells are contaminated with a hazardous substance above a health-based benchmark; 3) Soils on school, daycare center, or residential property are contaminated by a hazardous substance above background levels; 4) A hazardous substance is detected above health-based benchmarks in an offshore air release in a populated area; 5) A highly toxic substance known to bioaccumulate (e.g. PCBs, mercury, dioxin, PAHs) is discharged into surface waters; or 6) Sensitive environments (e.g., critical habitats for endangered species, Federal wilderness areas, National Parks) are contaminated with a hazardous substance.

should maintain adequate site documentation to support the “Superfund Alternative” designation based on the criteria referenced above. Credit for PRP-lead remedial actions at Superfund Alternative sites will only be given for activities conducted pursuant to enforceable order or agreement. Sites that meet these criteria should be identified in WasteLAN using the special initiatives indicator designating these sites as “Superfund Alternative”.

a. POTENTIALLY RESPONSIBLE PARTY (PRP) SEARCH STARTS

Definition:

A PRP search identifies PRPs at the site and establishes PRP liability, capability, and financial viability. At all sites, the PRP search activities should be initiated as soon as possible after the region decides that a response (removal or remedial) action is likely to be required at the site. For sites where remedial actions will be conducted, the PRP search should be initiated in time to send a SNL (at least 90 days prior to the obligation of funds for an ESI/RI, RI/FS or RA). For sites where removal actions will be conducted, the PRP search should be initiated as soon as the need for the removal has been identified in order to give a verbal notice of potential liability or to issue a general notice letter.

Definition of Accomplishment:

If the National Priorities List (NPL) PRP search (Action Name = NPL RP Search) or non-NPL PRP search (Action Name = Non-NPL PRP Search) is being conducted by a contractor, the actual start date (Actual Start) is considered to be the date the PRP search work assignment or procurement request is signed by the Contracting Officer (CO) or the designated Contracting Officer Representative (COR). The start for both the NPL and non-NPL PRP search is documented by the signed procurement request or work assignment. If the NPL or non-NPL PRP search is conducted by EPA in-house, the actual start date (Actual Start) is the date EPA staff develops the PRP search plan, the date the On-Scene Coordinator (OSC) receives confirmation of a spill identification number from the Regional Finance Office, or the date EPA initiates and documents search activities by some other means.

Changes in Definition FY 01- FY 02/03:

None

Special Planning/Reporting Requirements:

PRP searches (Action Name = Non-NPL PRP Search or NPL RP Search) are planned and funds requested on a site-specific basis. PRP Search Starts is a program measure.

b. PRP SEARCH COMPLETIONS

Definition:

A PRP search completion constitutes the completion of the activities taken by the region to identify PRPs at a site. In conducting the PRP search, the region must consider which of the criteria outlined below are cost effective and reasonable to meet relative to the anticipated overall cleanup costs at the site. Upon completion, regions should document in the site file that they have met all reasonable achievable criteria. Criterion 1 is mandatory for all PRP search completions. The PRP search should ideally be completed prior to completion of cleanup negotiations; however, it is recognized that this may not be achievable in all situations.

The recommended criteria for a thorough PRP search are:

1. Initiate a dialogue with early identified PRPs for the purpose of providing an opportunity for PRP input into the PRP search;
2. Collect the financial and contribution data needed to perform equitable share calculations;
3. Follow-up on all leads as a way to identify parties to the site;
4. Make *de minimis* and *de micromis* determinations for all parties at the site;
5. Categorize all parties [e.g., Generator/Transporter, Owner/Operator, Small Business (\$2 million or less gross annual revenue and 25 or less employees), Municipal Solid Waste Contributor, etc.]; and
6. Perform a financial viability determination on all PRPs asserting ability-to-pay problems.

Definition of Accomplishment:

The PRP search (Action Name = NPL RP Search or Non-NPL PRP Search) is complete when all applicable activities described in the Agency's PRP Search Manual have been completed and documentation has been placed in the site file that the region has met all reasonable achievable criteria for the PRP search, a PRP search outcome report with a list of PRPs has been prepared and both the actual completion date (Actual Complete) and the outcome (Qualifier) of the search have been entered into WasteLAN. If no PRPs are found, the region must document in the site file that it has met all reasonable achievable criteria for the PRP search and enter the actual completion date (Actual Complete) and the Qualifier of 'No PRPs Identified (NP)' into WasteLAN. This definition applies to both Phase I (single owner, operator site) and Phase II (multi-generator site) PRP searches.

Changes in Definition FY 01- FY 02/03:

None

Special Planning/Reporting Requirements:

PRP search completions (Action Name = Non-NPL PRP Search or NPL RP Search) are planned on a site-specific basis. The search outcome (Qualifier) is to be entered into WasteLAN. The number of PRPs found may be system generated by entering and associating PRPs with sites and selecting an Identification Source of "PRP Search." PRP search completions is a program measure.

c. SECTION 104(E) REFERRALS AND ORDERS ISSUED

Definition:

Section 104(e) referrals/orders are enforcement actions to compel PRPs to respond to EPA requests for information or to obtain site access.

Definition of Accomplishment:

The date the memo from the Regional Administrator transmitting the Section 104(e) referral to HQ or to the Department of Justice (DOJ) is recorded in WasteLAN as the actual start date (Actual Start) of the Section 104(e) referral (Action Name = Section 104(e) Ref. Litigation). The date a Section 104(e) Unilateral Administrative Order (UAO) or Administrative Order on Consent (AOC) is signed by the Regional Administrator or delegatee is recorded in WasteLAN as the actual completion date (Actual Complete) of the UAO (Action Name = Unilateral Admin Order) or AOC (Action Name = Admin Order on Consent).

Changes in Definition FY 01- FY 02/03:

None.

Special Planning/Reporting Requirements:

The actual start date (Actual Start) of the referral (Action Name = Section 104(e) Ref. Litigation) or the actual completion date (Actual Complete) of the order (Action Name = Unilateral Admin Order or Admin Order on Consent) is entered into WasteLAN site-specifically. The Law/Section reported in WasteLAN should be "CERCLA 104(e)" [(Law/Section = CERCLA 104(e)]. This is a program measure.

d. ISSUANCE OF GENERAL NOTICE LETTERS (GNLs)

Definition:

Letter sent by EPA under Section 122 of CERCLA informing recipients of their potential liability for cleanup actions at the site. It is usually sent out during the PRP search or during preparation for negotiations.

Definition of Accomplishment:

This action is accomplished on the date the GNL is signed by the appropriate EPA official and entered into WasteLAN as the SubAction, Notice Letters Issued, with an actual completion date (Actual Complete).

Changes in Definition FY 01 - FY 02/03:

None.

Special Planning/Reporting Requirements:

General Notice Letters are recorded as a SubAction to PRP search or negotiation actions. Issuance of GNLs is a program measure.

e. ISSUANCE OF SPECIAL NOTICE LETTERS (SNLs)

Definition:

A SNL is a letter from EPA to the PRPs informing them of their potential liability and inviting them to offer to conduct the planned response action(s) at the site. This letter, under Section 122(e) of CERCLA, triggers a negotiation moratorium allowing the PRPs to consider EPA's invitation to negotiate. The moratorium period varies depending on the response action (ESI/RI/FS, RD, or RA) and can be extended if necessary.

Definition of Accomplishment:

This action is accomplished on the date the SNL is signed by the appropriate EPA official and entered into WasteLAN as a SubAction, Special Notice Issued, with an actual completion date (Actual Complete). The date of issuance of the SNL also constitutes the start of negotiations [Action Name = RI/FS Negotiations, RD/RA Negotiations, Negotiations (Generic), or Removal Negotiations].

Changes in Definition FY 01 - FY 02/03:

None.

Special Planning/Reporting Requirements:

SNLs are recorded as a SubAction to PRP search or negotiation actions. The actual completion date of the SNL is the same as the actual start date (Actual Start) of the applicable negotiation action. Issuance of SNLs is a program measure.

f. EXPANDED SITE INSPECTION/REMEDIAL INVESTIGATION/FEASIBILITY STUDY (ESI/RI/FS) NEGOTIATION STARTS

Definition:

ESI/RI/FS negotiations are discussions between EPA and the parties on their liability, willingness, and ability to conduct the ESI/RI/FS.

Definition of Accomplishment:

ESI/RI/FS negotiations start when:

- The first SNL is signed by the appropriate EPA official. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RI/FS Negotiations] and the completion (Actual Complete) of the SNL SubAction (SubAction Name = Special Notice Issued); or
- A Section 122(a) waiver of SNL is signed by the appropriate EPA official with the intent to pursue negotiations without moratorium procedures. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RI/FS Negotiations] and the completion (Actual Complete) of the SNL waiver SubAction (SubAction Name = Notice of S 122 Waiver Issued).

Changes in Definition FY 01 - FY 02/03:

None.

Special Planning/Reporting Requirements:

If the region does not plan to perform ESI/RI/FS negotiations at a site, negotiation dates should not be placed in WasteLAN. The start of ESI/RI/FS negotiations [Action Name = Negotiations (Generic) or RI/FS Negotiations] should be planned site-specifically. The "Response Actions Sought" are to be entered into WasteLAN. The Response Actions Sought must include one or more of the following actions: PRP RI/FS, RI/FS, FS, PRP FS, RI, PRP RI, or ESI/RI. The actual start of the negotiation action is the same as the actual complete date (Actual Complete) of the SNL or waiver of SNL. ESI/RI/FS negotiation starts is a program measure.

g. REMEDIAL DESIGN/REMEDIAL ACTION (RD/RA) NEGOTIATION STARTS

Definition:

RD/RA negotiations are discussions between EPA and the parties on their liability, willingness, and ability to implement the long-term remedy selected in the Record of Decision (ROD) for the site or Operable Unit (OU).

Credit is given at NPL and Superfund Alternative sites (NPL Status = Proposed for NPL, Currently on Final NPL, or Deleted from Final NPL; or Special Initiatives Indicator = "Superfund Alternative" with NPL Status = Not on the NPL, Removed from the Proposed NPL, Pre-Proposed Site, or Withdrawn) that are not Federal facility sites (Federal Facility Indicator = Not a Federal Facility or Status Undetermined).

Definition of Accomplishment:

RD/RA negotiations start when:

- The first SNL is signed by the appropriate EPA official. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations]; or,
- A Section 122(a) waiver of SNL is signed by the appropriate EPA official with the intent to pursue negotiations without moratorium procedures. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations].

- **Subsequent Negotiations** - An interim settlement arises/order is issued for a portion of the site work from an existing set of RD/RA negotiations and the Region does not plan to issue new special notice letter(s). The Region shall establish a new RD/RA negotiation event in WasteLAN with a start date the same as the completion date of the first set of RD/RA negotiations from which interim settlement/order arose (i.e. Referral of Consent Decree for RD/RA, Issuance of UAO for RD/RA). This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations].
- **Concurrent Negotiations** - The next phase of negotiations begins before the completion of the current RD/RA negotiations and the Region does not plan to issue new special notice letter(s). The Region shall establish a new RD/RA negotiation event in WasteLAN using whichever is earlier either the date concurrent negotiations are first documented in meeting minutes or in a Memorandum for the Record or the date the letter is signed by the appropriate EPA official accepting the Good Faith Offer (GFO) from PRPs that separates the negotiations, as the start date of the new RD/RA negotiations. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations].

Changes in Definition FY 01 - FY 02/03:

Added definition of accomplishment for RD/RA Negotiation Starts that are phased sequentially and concurrently. Replaced "NPL Equivalent" with "Superfund Alternative" and revised corresponding WasteLAN data element.

Special Planning/Reporting Requirements:

If the region does not plan to conduct RD/RA negotiations, dates should not be entered into WasteLAN. The start of RD/RA negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations] is planned site-specifically. The "Response Actions Sought" are to be entered into WasteLAN. The "Response Actions Sought" must include one or more of the following actions: Remedial Design, Remedial Action, PRP RD or PRP RA. The actual start of the negotiation action is the same as the actual completed date (Action Complete) of the SNL or waiver of SNL. Superfund Alternative sites should be identified in WasteLAN using the Special Initiatives Indicator of "Superfund Alternative". RD/RA negotiation starts is a program measure.

h. COMPLETION OR TERMINATION OF NEGOTIATIONS FOR RD/RA

Definition:

RD/RA negotiations are discussions between EPA and the parties on their liability, willingness, and ability to implement the long-term remedy selected in the ROD for the site or Operable Unit (OU).

RD/RA negotiations end when the region decides how to proceed with the RD/RA.

Definition of Accomplishment:

Credit is given at NPL and Superfund Alternative sites (NPL Status = Proposed for NPL, Currently on Final NPL, or Deleted from Final NPL; or Special Initiatives Indicator = "Superfund Alternative" with NPL Status = Not on the NPL, Removed from the Proposed NPL, Pre-Proposed Site, or Withdrawn) that are not Federal facility sites (Federal Facility Indicator = Not a Federal Facility or Status Undetermined) when:

- A signed Consent Decree (CD) under Section 106 or Section 106/107 and a 10-point analysis for RD or RA is referred by the Regional Administrator to either DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the signed transmittal memo, which is the CD (Action Name = Consent Decree) actual start date (Actual Start); or
- A Unilateral Administrative Order (UAO) for RD or RA is signed by the Regional Administrator or delegatee. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date the UAO (Action Name = Unilateral Admin Order) is signed, which is the UAO actual completion date (Actual Complete); or

- A Section 106 or Section 106/107 injunctive referral to compel the PRP to perform the RD or RA as specified in a UAO is referred by the Regional Administrator to DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the Regional Administrator's transmittal memo, which is the litigation [Action name = Litigation (Generic), Section 106 & 107 Litigation, or Section 106 Litigation] actual start date (Actual Start); or
- EPA and PRPs are notified by a letter from DOJ of the date (Actual Complete) on which they will proceed to trial under an existing case [Action Name = Negotiations (Generic) or RD/RA Negotiations]; or
- An Administrative Order on Consent (AOC) or Consent Agreement (CA) for RD only is signed by the Regional Administrator or delegatee. Where an AOC or CA for RD only is issued, no credit will be given for the subsequent RA negotiation starts and completions. Credit will, however, be given under Total Response Settlements for the referral of a CD for RA to DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date the AOC or CA is signed, which is the AOC (Action Name = Admin Order on Consent or Consent Agreement) actual completion (Actual Complete); or
- If Special Notice Letters are issued specifically to initiate RD/RA Negotiations and the negotiations result in an amendment to an existing settlement to include RD/RA, the negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date the amended settlement is signed. This amendment date is tracked as the actual completion date (Actual Complete) of the settlement SubAction, Enforcement Action Amended; or
- Funds are obligated through a contract modification or work assignment signed by the CO, an IAG signed by the other Federal agency, or a Cooperative Agreement signed by the designated Regional official for a Fund-financed RD at NPL or Superfund Alternative sites or RA at NPL sites. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date funds are obligated. If funds are not available and the region decides a UAO is not appropriate, the negotiation [Action Name = Negotiation (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the written documentation of the region's decision not to issue a UAO.

Changes in Definition FY 01- FY 02/03:

Replaced "NPL Equivalent" with "Superfund Alternative" and revised corresponding WasteLAN data element.

Special Planning/Reporting Requirements:

This is a program measure. RD/RA negotiation completions are planned site-specifically. The negotiation completion date is reported in WasteLAN as the actual completion date (Actual Complete) of either generic negotiations or RD/RA negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations]. The "Response Actions Sought" and the outcome of the negotiations [Other Outcome(s) Selected or Outcome Actions Selected] also must be reported in WasteLAN. The "Response Actions Sought" must include one or more of the following actions: Remedial Design, Remedial Action, PRP RD or PRP RA. Superfund Alternative sites should be identified in WasteLAN using the Special Initiatives Indicator of "Superfund Alternative".

i. COMPLETION OR TERMINATION OF NEGOTIATIONS FOR CLEANUP (RD/RA, REMOVALS, AND OTHER)

Definition:

Cleanup negotiations are discussions between EPA and the parties on their liability, willingness, and ability to conduct the cleanup. Negotiations are complete (for NPL and Superfund Alternative sites) when a decision has been made as to how the region will proceed with the cleanup.

Definition of Accomplishment:

Credit is given at NPL and Superfund Alternative sites (NPL Status = Proposed for NPL, Currently on Final NPL, or Deleted from Final NPL; or Special Initiatives Indicator = "Superfund Alternative" with NPL Status = Not on the NPL, Removed from the Proposed NPL, Pre-Proposed Site, or Withdrawn) that are not Federal facility sites (Federal Facility Indicator = Not a Federal Facility or Status Undetermined) when:

- A signed Consent Decree (CD) under Section 106 or Section 106/107 and a 10-point analysis for RD, RA, groundwater monitoring activities post ROD, institutional controls, or a time-critical or NTC removal is referred by the Regional Administrator to either DOJ or HQ. The negotiation [Action Name = Negotiations (Generic), RD/RA Negotiations, or Removal Negotiations] actual completion date (Actual Complete) is the date of the signed transmittal memo, which is the CD (Action Name = Consent Decree) actual start date (Actual Start); or
- A Unilateral Administrative Order (UAO) for RD, RA, groundwater monitoring activities post ROD, institutional controls, or a time-critical or NTC removal is signed by the Regional Administrator or delegatee. The negotiation [Action Name = Negotiations (Generic), RD/RA Negotiations, or Removal Negotiations] actual completion date (Actual Complete) is the date the UAO (Action Name = Unilateral Admin Order) is signed which is the UAO actual completion date (Actual Complete); or
- An Administrative Order on Consent (AOC) or Consent Agreement (CA) for RD only, or groundwater monitoring activities post-ROD, or institutional controls is signed by the Regional Administrator or delegatee. Where an AOC or CA for RD only is signed, no credit will be given for the subsequent RA negotiation starts and completions. Credit will, however, be given under Total Response Settlements for the referral of a CD for RA to DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date the AOC or CA is signed, which is the AOC (Action Name = Admin Order on Consent) or CA (Action Name = Consent Agreement) actual completion (Actual Complete); or
- An AOC or CA for a time-critical or NTC removal is signed by the Regional Administrator or delegatee. The negotiation [Action Name = Negotiations (Generic) or Removal Negotiations] actual completion date (Actual Complete) is the date the AOC or CA is signed, which is the AOC (Action Name = Admin Order on Consent) or CA (Action Name = Consent Agreement) actual completion date (Actual Complete); or
- A Section 106 or Section 106/107 injunctive referral to compel the PRP to perform the cleanup (RD or RA) as specified in a UAO is referred by the Regional Administrator to DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the Regional Administrator's transmittal memo, which is the litigation [Action Name = Litigation (Generic), Section 106 & 107 Litigation, or Section 106 Litigation] actual start date (Actual Start); or
- A Prospective Purchaser Agreement (PPA) implementing the entire remedy is signed by the Regional Administrator or delegatee. Credit is not given for negotiation completions as a result of a PPA which implements part of the remedy. The negotiation [Action Name = Negotiations (Generic), Removal Negotiations or RD/RA Negotiations] actual completion date (Actual Complete) is the date the PPA (Action Name = Admin Order on Consent or Consent Agreement and Enf. Instrument Category = Prospective Purchaser Agreement) is signed by the Regional Administrator or delegatee which is the actual completion date (Actual Complete) of the AOC or CA; or
- EPA and PRPs are notified by a letter from DOJ of the date (Actual Complete) on which they will proceed to trial under an existing case [Action Name = Negotiations (Generic) or RD/RA Negotiations]; or
- For settlements that are amended to include cleanup actions, the negotiation [Action Name = Negotiations (Generic), RD/RA Negotiations, or Removal Negotiations] actual completion date (Actual Complete) is the date the amended instrument is signed. This amendment date is tracked as the actual completion date (Actual Complete) of the settlement SubAction, Enforcement Action Amended; or

- Funds are obligated through a contract modification or work assignment signed by the CO, an IAG signed by the other Federal agency, or a Cooperative Agreement signed by the designated Regional official for a Fund-financed time-critical or NTC removal or RA. Only those sites that are final on the NPL are eligible for Fund-financed RAs. The negotiation [Action Name = Negotiations (Generic), Removal Negotiations, or RD/RA Negotiations] actual completion date (Actual Complete) is the date funds are obligated. If funds are not available and the region decides a UAO is not appropriate, the negotiation [Action Name = Negotiations (Generic), Removal Negotiations, or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the written documentation of the region's decision not to issue the UAO.

Changes in Definition FY 01 - FY 0102/03:

Replaced "NPL Equivalent" with "Superfund Alternative" and revised corresponding WasteLAN data element

Special Planning/Reporting Requirements:

This is a program target. Cleanup negotiation completions are planned site-specifically. The negotiation completion date is reported in WasteLAN as the actual completion date (Actual Complete) of either generic negotiations, RD/RA negotiations, or removal negotiations [Action Name = Negotiations (Generic), RD/RA Negotiations, or Removal Negotiations]. The "Response Actions Sought" and the outcome of the negotiations [Other Outcome(s) Selected or Outcome Actions Selected] also must be reported in WasteLAN. Regions will receive credit for the completion of cleanup negotiations that result in the signature of an AOC or CA with a prospective purchaser that is implementing the entire remedy. Superfund Alternative sites should be identified in WasteLAN using the Special Initiatives Indicator of "Superfund Alternative".

j. PERCENTAGE OF REMEDIAL ACTION STARTS INITIATED BY PRPS AT NON-FEDERAL FACILITY NPL AND SUPERFUND ALTERNATIVE SITES

Definition:

A Remedial Action (RA) is the implementation of the remedy selected in the ROD, and for the purposes of this measure, occurs at non-Federal facility NPL and Superfund Alternative sites.

Definition of Accomplishment:

This measure is the percentage of enforcement lead (i.e., PRP-financed in the RA Start Definition of Accomplishment in Appendix B) RA starts at non-Federal facility NPL and Superfund Alternative sites. It is calculated as the enforcement percentage of the total number of non-Federal facility RA starts. The GPRA annual performance goal is to achieve 70 percent or more PRP-lead RA starts at non-Federal facility NPL and Superfund Alternative sites.

DISCLAIMER: Regions will receive credit in the management of the Superfund program for "start" of a remedial action even though "initiation of physical on-site construction" may not have occurred for purposes of calculating a cost recovery statute of limitations. The date found in the remedial action actual start column of a CERCLIS/WasteLAN report is a programmatic measure only, and cannot be relied on upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. EPA reserves the right to change such data at any time without public notice.

Changes in Definition FY01 - FY 02/03:

Replaced "NPL Equivalent" with "Superfund Alternative" and referred to Appendix B RA Start Definition of Accomplishments for enforcement lead.

Special Planning/Reporting Requirements:

This is a GPRA annual performance goal. See special planning requirements in Appendix B, Section B.A.3.m, RA Start definition. Superfund Alternative sites should be identified in WasteLAN using the Special Initiatives Indicator of "Superfund Alternative".

k. TOTAL RESPONSE COMMITMENTS (INCLUDING DOLLAR VALUE)

Definition:

Total Response Commitments is the total universe of CERCLA enforcement instruments where the parties agree to conduct cleanup work and/or make cash payments toward future response costs at a site. This measure will require reporting of both the number of enforcement instruments as well as the estimated value of the response work and/or cash payments toward future response costs pursuant to each of those instruments.

Definition of Accomplishment:

Enforcement Instruments at non-Federal facility NPL, Superfund Alternative, and non-NPL sites include:

- A Consent Decree (CD) signed by the Regional Administrator and PRPs and 10-point analysis is transmitted by the Regional Administrator to DOJ or HQ, under Section 106 or 106/107 for PRPs to conduct or pay for the response action [ESI/RI, RI, RI/FS, FS, RD, RA, groundwater monitoring activities post ROD, institutional controls, time-critical or NTC removal]. Credit for the CD referral (Action Name = Consent Decree) is given on the date on which the Regional Administrator's transmittal memo is sent to DOJ or to HQ as recorded in WasteLAN as the actual start date (Actual Start). This includes CDs for mixed work, preauthorized mixed funding, *de minimis*, and cashout settlements. The appropriate Enforcement Instrument Categories Selected also must be entered into WasteLAN; or
- A Unilateral Administrative Order (UAO) is signed by the Regional Administrator or delegatee for RD or RA, and at least one of the PRPs has provided notice of intent to comply unconditionally. For UAOs for RD/RA, commitment credit is given on the date of the PRP's written notice of intent to comply with the order. This is reported in WasteLAN as the actual completion date (Actual Complete) of the Notice of Intent to Comply SubAction (SubAction Name = PRPs Ntfy EPA, Intent to Comply). The actual completion date (Actual Complete) of the order (Action Name = Unilateral Admin Order) is the date it is signed.

If a PRP initially complies with a UAO, credit will be given for the UAO when the first PRP provides written notice of intent to comply. If, at a later date, the PRP agrees to a CD for the same work, credit will be given for the CD when it is referred by memo to DOJ or HQ. At this point the region will receive credit for the CD only and not the UAO. When adding the Consent Decree Action, the region should identify the UAO as the predecessor action through Action Relationships and enter the estimated value of the UAO as the estimated value of the CD if the CD covers the same work. If the CD covers more work than the UAO it replaces, a revised estimate may be necessary. The WasteLAN reporting requirements for the CD apply.

For all other response activities, commitment credit is given the date the UAO (Action Name = Unilateral Administrative Order) is signed by the Regional Administrator or delegatee as the actual completion date (Actual Complete).

- An Administrative Order on Consent (AOC) or Consent Agreement (CA) is signed by the Regional Administrator or delegatee for PRPs to perform or pay for an ESI/RI, RI, RI/FS, FS, time-critical or NTC removal, RD, monitored natural attenuation, institutional controls, or groundwater monitoring post-ROD. The date the AOC or CA is signed (Action Name = Admin Order on Consent or Consent Agreement (CA)) is reported in WasteLAN as the actual completion date (Actual Complete).
- Commitment credit is also given when an AOC or Consent Agreement (CA) is signed that provides protection from potential future liability to a prospective purchaser that is implementing the remedy. The actual completion date (Actual Complete) is the date the AOC or CA (Action Name = Admin Order on Consent or Consent Agreement and Enf Instrument Category Selected = Prospective Purchaser Agreement) is signed by the Regional Administrator or delegatee.

Total Response Commitments will be reported as a combined total of CDs, CAs, AOCs, and UAOs, where response actions have been achieved and/or parties agree to make cash payments toward future response costs at a site. The value of Total Response Commitments is based on the estimated value of PRP response work and/or payments made by responsible parties toward future response costs at a site.

Changes in Definition FY 01- FY 02/03:

Modified measure to include enforcement instruments where parties agree to make cash payments toward future response costs at sites. Historically, the Office of Site Remediation (OSRE) has included these enforcement instruments in this program measure but has not previously included them in the Superfund/Oil Program Implementation Manual (SPIM). Replaced “NPL Equivalent” with “Superfund Alternative”.

Special Planning/Reporting Requirements:

The applicable “Response Actions Pd by Parties,” the “Work the PRP Will Perform - Value” (see supplement to: OSWER Directive #9200.3-14-1a) or the “Federal Costs Settled - Future”, “Other Relief Achieved” , if applicable; and, if necessary, the “Enforcement Instrument Categories Selected” are to be reported in WasteLAN. Settlement credit will be given for an AOC or CA with a prospective purchaser if “Prospective Purchaser Agreement” is the selected enforcement instrument category. Existing settlements for ESI/RI, RI/FS or FS that are amended to include RD should be reported in WasteLAN. The date the amendment is signed is the actual completion date (Actual Complete) of the SubAction “Enforcement Action Amended.” The region should also indicate the “Response Actions Pd by Parties” added under the settlement. Amended Instruments will not count for credit in the current year; however, the Total Response Commitments will be included in the program to-date dollar amount. Dollars received in a cashout settlement should be deposited in an interest bearing special account if site-specific conditions warrant. See the measure, Settlements Designating Deposits to Special Accounts, for more information. This is a program measure.

1. ENFORCEMENT SETTLEMENTS/INSTRUMENTS FOR RD/RA/Long Term Response (LR) (Including Dollar Value)

Definition:

This measure is a subset of the universe of “Total Response Commitments.” This is a measure of CERCLA enforcement settlements (CDs, AOCs, or CAs), or instruments (UAOs) where the parties agree to conduct remedial (RD, RA, or LR) response work. This measure will require reporting of both the number of enforcement/settlements, as well as the estimated value of the response work pursuant of each of those settlements/instruments.

Definition of Accomplishment:

Enforcement Instruments at non-Federal facility NPL, Superfund Alternative, and non-NPL sites include:

- Consent Decree (CD) signed by the Regional Administrator and PRPs and 10-point analysis is transmitted by the Regional Administrator to DOJ or HQ, under Section 106 or 106/107, for PRPs to conduct or pay for the remedial or long term response action [RD, RA, or LR]. Credit for the CD referral (Action Name = Consent Decree) is given on the date on which the Regional Administrator’s transmittal memo is sent to DOJ or to HQ as recorded in WasteLAN as the actual start date (Action Start). This includes CDs for mixed work, preauthorized mixed funding, *de minimis*, and cashout settlements. The appropriate Enforcement Instrument Categories Selected also must be entered into WasteLAN; or
- Unilateral Administrative Order (UAO) for RD, RA, or LR is signed by the Regional Administrator or delegatee, and at least one of the PRPs has provided notice of intent to comply unconditionally. For UAOs for RD, RA, or LR, commitment credit is given on the date of the PRP’s written notice of intent to comply with the order. This is reported in WasteLAN as the actual completion date (Actual Complete) of the Notice of Intent to Comply SubAction (SubAction Name = PRPs Ntfy EPA, Intent to Comply). The actual completion date (Actual Complete) of the order (Action Name = Unilateral Admin Order) is the date it is signed.

If a PRP initially complies with a UAO, credit will be given for the UAO when the first PRP provides written notice of intent to comply. If, at a later date, the PRP agrees to a CD for the same work, credit will be given for the CD when it is referred by memo to DOJ or HQ. At this point, the region will receive credit for the CD only and not the UAO. When adding the Consent Decree Action, the region should identify the UAO as the predecessor Action through Action Relationships and enter the estimated value of the UAO as the estimated value of the CD if the CD covers the same work. If the CD covers more work than the UAO it replaces, a revised estimate of response value may be necessary. The WasteLAN reporting requirements for the CD apply; or

- An Administrative Order on Consent (AOC) or Consent Agreement (CA) is signed by the Regional Administrator or delegatee for RD only, or a cashout settlement of *de minimis* parties for RA, or a LR such as groundwater monitoring post-ROD, or institutional controls. The date the AOC or CA is signed (Action Name = Admin Order on Consent or Consent Agreement) is reported in WasteLAN as the actual completion date (Actual Complete).
- Credit is also given when an AOC or CA is signed for RD, RA, or LR work, and provides protection from potential future liability to a prospective purchaser that is implementing the remedy. The actual completion date (Actual Complete) is the date the AOC or CA (Action Name = Admin Order on Consent of Consent Agreement and Enf Instrument Category Selected = Prospective Purchaser Agreement) is signed by the Regional Administrator or delegatee.
- Enforcement Settlements/Instruments for RD, RA, or LR will be reported as a combined total of CDs, UAOs (with Notice of Intent to Comply), AOCs, and CAs where RD, RA or LR actions have been achieved. The value of RD, RA, or LR commitments is based on the estimated value of PRP response work and/or payments made by responsible parties toward future response work (i.e., cashouts).

Changes in Definition FY 01 - FY 02/03:

This is a new program measure. Historically, OSRE has tracked the enforcement settlements/instruments for RD, RA, or LR but has not previously included this measure in the SPIM. Replaced “NPL Equivalent” with “Superfund Alternative”.

Special Planning/Reporting Requirements:

The applicable “Response Actions Pd by Parties,” the “Work PRP Will Perform - Value” of the response actions the PRPs are performing (see supplement to: OSWER Directive #9200.3-14-1a) or the “Federal Costs Settled - Future” and, if necessary, the “Enforcement Instrument Categories Selected” are to be reported in WasteLAN. Existing settlements for ESI/RI, RI/FS, or FS that are amended to include RD should be reported in WasteLAN. The date that the amendment is signed is the actual completion date (Actual Complete) of the SubAction “Enforcement Action Amended.” The region should also indicate the “Response Actions Pd by Parties” added under the settlement/ instrument. Amended Instruments will not count for credit in the current year; however, the settlement/instrument will be included in the program to-date amount. Enforcement Settlements/Instruments for RD/RA/ LR will be reported in the ENFR-03 report - Settlement type = “RD/RA/LR Only” category. This is a program measure.

m. DE MINIMIS SETTLEMENTS AND NUMBER OF PARTIES**Definition:**

This measure reports the total number of administrative or judicial settlements that are reached under Section 122(g) of CERCLA, with PRPs qualified as de minimis. This type of settlement results in PRPs paying a minor portion of the estimated response costs at the site, and is embodied in a CD or an AOC. If the total response costs at the site exceed \$500,000 (excluding interest), the AOC can only be signed by the Regional Administrator or delegatee after prior written approval from DOJ. If DOJ does not approve or disapprove the order within 30 days, the order is considered approved and can then be signed by the region. The DOJ and the Regional Administrator or delegatee can agree to extend the 30-day period if necessary.

This measure will examine the total number of de minimis settlements under Section 122(g), the number of PRPs who sign such settlements, and the number of sites at which de minimis settlements were signed.

Definition of Accomplishment:

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites for de minimis settlements in the following two categories.

Category 1: De minimis settlements include:

- An Administrative Order on Consent (AOC) (Action Name = Admin Order on Consent) signed by the Regional Administrator or delegatee as reported in WasteLAN as the actual completion date (Actual Complete); or
- When the Regional Administrator signs the memorandum transmitting the Consent Decree (CD) (Action Name = Consent Decree) signed by the de minimis parties to DOJ or HQ, and reported in WasteLAN as the actual start date (Actual Start).

The number of signatories to the settlement is system generated in WasteLAN from the identification of the PRPs who have signed the settlement.

Category 2: Early de minimis settlements include:

- An AOC (Action Name = Admin Order on Consent) signed by the Regional Administrator or delegatee prior to the first remedy selection (ROD) at the site, or prior to a subsequent ROD which addresses response costs that are included in the settlement. The date the AOC is signed is reported in WasteLAN as the actual completion date (Actual Complete) of the AOC (Action Name = Admin Order on Consent).
- When the Regional Administrator signs the memorandum transmitting the CD (Action Name = Consent Decree) signed by the de minimis parties and the Regional Administrator to DOJ or HQ prior to the first remedy selection (ROD) at the site or prior to a subsequent ROD which addresses response costs that are included in the settlement. The date the CD is signed is reported in WasteLAN as the actual start date (Actual Start) of the CD (Action Name = Consent Decree).

The number of signatories to the settlement is system generated in WasteLAN from the identification of the PRPs who have signed the settlement.

Changes in Definition FY 01- FY 02/03:

This is now a program target and GPRA reporting measure. Replaced “NPL Equivalent” with “Superfund Alternative”.

Special Planning/ Reporting Requirements:

This is a program target and a GPRA annual performance reporting measure. The following information should be entered into WasteLAN for both Category 1 and Category 2 settlements:

- Enforcement Instrument Categories Selected of de minimis;
- PRPs that signed the settlement (Parties Associated with Action, Party Name);
- Dollar amount that will be used for current, future, or past work covered by the settlement [Work PRP Will Perform - Value, Federal Costs Settled - Past and/or Federal Costs Settled - Future (as applicable)]; and
- Applicable Response Actions Pd by Parties, Other Relief Achieved, or Response Actions Reimbursed.

To indicate the de minimis PRPs that signed the settlement, the following information must be entered for each party on the Party Search/Information, Involvement tab:

- Basis of Liability of “De Minimis Party”; and
- Involvement Type of “Owner”, “Generator” or “Transporter”.

Since many de minimis settlements are cashouts, regions also must enter an Enforcement Instrument Category of “Cashout.” Dollars received in a de minimis cashout settlement should be deposited in an interest bearing special account if site-specific conditions warrant. See the Settlements Designating Deposits to Special Accounts measure for additional information. The number of signatories to the settlement is system generated from the identification of the PRPs who have signed the settlement.

Additional Reporting Requirements:

- Regions are requested to provide site-specific targets for de minimis settlements. During the fiscal year, regions can change sites within the target number without OSRE approval, but OSRE should be informed of any changes.
- Following each de minimis settlement, the Region’s Office of Regional Counsel will be asked to complete a de minimis Settlement Survey Form, and may be asked for copies of the 10-Point Analysis. This information is used for analytical, and reauthorization support, and other information requests.

(Also see De Micromis Settlements and Number of Parties.)

n. CASHOUT SETTLEMENTS

Definition:

This measure reports the total number of administrative or judicial settlements where the parties agree to make cash payments toward future response costs at a site.

Definition of Accomplishment:

Credit is given when:

- The Regional Administrator transmits the cashout CD (Action Name = Consent Decree) to DOJ or HQ as recorded in WasteLAN as the actual start date (Actual Start); or

- The Regional Administrator or delegatee signs the AOC (Action Name = Admin Order on Consent) for the cashout settlement as recorded in WasteLAN as the actual completion date (Actual Completion).

Changes in Definition FY 01 - FY 02/03:

None.

Special Planning/Reporting Requirements:

This is a program measure. Regions must enter the appropriate Enforcement Instrument Category “Federal Costs Settled - Future”, “Response Actions Pd by Parties”, and/or “Other Relief Achieved”. Dollars received in a cashout settlement should be deposited in an interest bearing special account if site-specific conditions warrant. See the measure, Settlements Designating Deposits to Special Accounts, for more information.

o. SECTION 106, 106/107, 107 CASE RESOLUTION (Including Claim in Bankruptcy)

Definition:

Case resolution is the conclusion of a Section 106, 106/107, 107 judicial action, or Claim in Bankruptcy by full settlement, final judgment, case dismissal, or case withdrawal.

Definition of Accomplishment:

Credit for case resolution is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites when:

- A Consent Decree (CD) is entered in the court and signed by the judge fully addressing the complaint with all parties; or
- The region receives a memo or letter from DOJ withdrawing the case; or
- A decision document is submitted by the judge dismissing the case; or
- A trial has concluded and a judgment rendered and signed by the judge fully addressing the complaint.

The Litigation or case resolution (Action Name = Litigation (Generic), Section 106 & 107 Litigation, Section 107 Litigation, Section 106 Litigation, or Claim in Bankruptcy Proceeding) actual completion date (Actual Complete) is defined as follows:

- Date full settlement CD is entered. This is the actual completion date (Actual Complete) of the CD, actual completion date of the SubAction = Entered by Court, and the litigation or bankruptcy action actual completion date (Actual Complete);
- Date case is withdrawn (SubAction Name = Case Withdrawn) as the SubAction completion and litigation or bankruptcy actual completion date (Actual Complete);
- Date case is dismissed (SubAction Name = Case Dismissed) as the SubAction and litigation or bankruptcy actual completion date (Actual Complete); or
- Date judgment is entered (Action Name = Judicial/Civil Judgment) as the judgment and the litigation or bankruptcy actual completion date (Actual Complete).

Changes in Definition FY 01 - FY 02/03:

Modified measure to include Claim in Bankruptcy. Replaced “NPL Equivalent” with “Superfund Alternative”.

Special Planning/Reporting Requirements:

This is a program measure.

p. ISSUANCE OF DEMAND LETTER

Definition:

A Section 122(e) letter issued from EPA to the PRP requesting that the PRP reimburse the Fund for a specific amount associated with one or more response activities. Demand letters are typically sent for each separate response activity.

Definition of Accomplishment:

This Action is accomplished on the date (Actual Complete) the demand letter is signed by the appropriate EPA official and recorded in WasteLAN as a Action (Action Name = Demand Letters Issued) to the negotiation actions, Administrative/Voluntary Cost Recovery action, UAO, Litigation actions, or Decision Documents.

Changes in Definition FY 01 - FY 02/03:

None.

Special Planning/Reporting Requirements:

This is a program measure.

q. TOTAL COST RECOVERY SETTLEMENTS (INCLUDING DOLLAR VALUE)

Definition:

Total Cost Recovery Settlements is the total universe of CERCLA enforcement cost recovery settlements where the parties agree to pay past costs to the Agency. This measure will require reporting of both the number of settlements as well as the value of the past costs to be recovered pursuant to each of these settlements.

Definition of Accomplishment:

Settlements at non-Federal facility NPL, Superfund Alternative, and non-NPL sites include:

- ***Consent Decrees*** - Credit is given for CD settlements (Action Name = Consent Decree) for RD/RA with a cost recovery component, or CDs for cost recovery only that were not a result of a previous litigation referral, on the date of the Regional Administrator's memo transmitting the settlement to DOJ or HQ and recorded in WasteLAN as the actual start date (Actual Start).

For CD settlements that are for cost recovery only and result from a previous litigation referral, regions should not add a CD start date (Actual Start). Only the lodged (SubAction Name = Lodged by DOJ) and entered (SubAction Name = Entered by Court) SubActions, their actual completion dates (Actual Complete), and the actual completion date (Actual Complete) of the CD are recorded. The actual completion date of the CD is the date it is entered by the court. If the actual completion date for the Lodged by DOJ SubAction exists, credit will be given in the FY identified by this completion date.

- ***Administrative Settlements*** - Credit is given on the date that the Regional Office or DOJ receives payment from the PRPs in direct response to a demand letter for voluntary cost recovery or the date the Regional Administrator or delegatee signs the Administrative Order on Consent (AOC) or Consent Agreement (CA) for cost recovery. The date must be reported in WasteLAN as the actual completion date (Actual Complete) of the administrative/voluntary

cost recovery (Action Name = Admin/Voluntary Cost Recovery), AOC (Action Name = Admin Order on Consent), or CA (Action Name = Consent Agreement).

Total Cost Recovery Settlements will be reported as the combined total of CDs, CAs, Administrative/Voluntary Cost Recovery actions and AOCs where cost recovery has been achieved.

Changes in Definition FY 01 - FY02/03:

Replaced “NPL Equivalent” with “Superfund Alternative”.

Special Planning/Reporting Requirements:

This is a program measure. The “Federal Costs Settled - Past” must be entered into WasteLAN. This measure will be reported in the ENFR-03 report. The “Federal Costs Settled - Past” (i.e. the value of costs recovered) will be reported for GPRA.

r. PAST COSTS ADDRESSED ≥ \$200,000 VIA SETTLEMENTS, WRITE-OFFS, OR REFERRALS

Definition:

Past Costs Addressed ≥ \$200,000 is the decision either to take cost recovery action by use of administrative cost recovery settlement, to transmit a Section 106/107 or 107 judicial referral for cost recovery, including settlements for past costs under a CD (with no prior litigation referral); to prepare a decision document or 10-point settlement analysis document not to pursue cost recovery, or to file a claim in bankruptcy.

It only covers cases where EPA has incurred costs ≥ \$200,000. It is vital to the management of the cost recovery program that sites with upcoming Statute of Limitations (SOLs) be addressed prior to the expiration of the SOL. Therefore, regions will not be allowed to substitute FY 02/03 targeted sites that have SOLs occurring in or before FY02/03 or the first quarter of FY03/04.

Definition of Accomplishment:

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites.

Administrative Settlements - Credit is given on the date the Regional office or DOJ receives payment from the PRPs in direct response to a demand letter for voluntary cost recovery, or the date the Regional Administrator or delegatee signs the Administrative Order on Consent (AOC) or Consent Agreement (CA) that recovers 100 percent of the Trust Fund expenditures or settles a claim where the total response cost are less than \$500,000. The accomplishment of the administrative settlement is recorded in WasteLAN as the actual completion date (Actual Complete) of the administrative/voluntary cost recovery (Action Name = Admin/Voluntary Cost Recovery), AOC (Action Name = Admin Order on Consent), or CA (Action Name = Consent Agreement). If the settlement is compromised and total response costs are more than \$500,000, the AOC must be sent to DOJ for approval prior to signature by the Regional Administrator or delegatee.

Section 107 or 106/107 Judicial Referrals - Credit is given on the date of the Regional Administrator’s memo transmitting the referral to DOJ or HQ [Action Name = Litigation (Generic), Section 107 Litigation, or Section 106 & 107 Litigation] as recorded in WasteLAN as the actual start date (Actual Start).

This includes Consent Decree (CD) settlements (Action Name = Consent Decree) for RD/RA with a cost recovery component or CD settlements for cost recovery only that were not the result of a prior litigation referral. Credit is given for these CD settlements on the date of the Regional Administrator’s memo transmitting the settlement to DOJ or HQ and recorded in WasteLAN as the actual start date (Actual Start).

CD settlements that are for cost recovery only and result from a previous litigation referral do not count towards this target. The start date (Actual Start) for these actions is not reported in WasteLAN. Only the lodged (SubAction Name = Lodged by DOJ) and entered (SubAction Name = Entered by Court) SubActions, the SubAction actual completion date (Actual Complete), and the actual completion date (Actual Complete) of the CD are recorded. The actual completion date of the CD is the date it is entered by the court.

Decision Documents not to Pursue Cost Recovery - Credit is given when the decision document (Action Name = Cost Recovery Decsn Docmt - No Sue) is signed by the Regional office and recorded in WasteLAN as the actual completion date (Actual Complete). The decision not to pursue cost recovery also may be documented in a 10-point settlement analysis. For both the Cost Recovery Decision Document Not to Sue and the enforcement instrument 10-point settlement analysis, the past costs that will not be recovered (Past Costs Written Off) and the reason the costs were written off should be reported in WasteLAN.

Bankruptcy Filing - Credit is given based on the date that the bankruptcy strategy package is prepared or on the date of the first creditor committee meeting as documented by the summary of the meeting. These dates are reported in WasteLAN as the SubAction "Creditors Committee Meeting" and/or "Bankruptcy Strategy Package" actual completion dates (Actual Complete). These SubActions are entered with the Claim in Bankruptcy action. For each Claim in Bankruptcy, the "Federal Costs Sought - Past" must be entered into WasteLAN.

Changes in Definition FY 01 - FY 02/03:

Replaced "NPL Equivalent" with "Superfund Alternative".

Special Planning/Reporting Requirements:

All dates must be entered into WasteLAN. Credit for referrals is based on the referral package, not on the number of sites. Credit will be withdrawn if a case is returned to the region by DOJ or HQ for additional work, but will be reinstated upon re-referral. For each settlement, the region must enter the following information into WasteLAN: "Federal Costs Settled - Past". For each judicial referral, regions must enter the following information: "Federal Costs Sought - Past". For each decision not to pursue cost recovery, the "Past Costs Written Off" must be entered. Accomplishments are reported on a site-specific basis. Any changes to the target require prior approval by the OSRE. This is a GPRA annual performance goal.

s. RECOVERABLE PAST COSTS THAT HAVE BEEN ADDRESSED BY PROGRAM TO DATE VIA SETTLEMENTS, WRITE-OFFS, OR REFERRALS

Definition:

This measure supports the goal of Trust Fund Stewardship by reporting the amount and percentage of recoverable past costs that were addressed versus all recoverable past costs (i.e., past costs eligible for recovery, program-to-date). The regions are encouraged to address all of the recoverable past costs through enforcement activities so that the maximum amount of recoverable funds can be obtained to support Superfund cleanups.

Recoverable past costs are past costs that are considered potentially recoverable. These costs include EPA direct and indirect costs, plus contractor program management costs which are allocated to sites annually.

Some Superfund past costs are considered unrecoverable, including funds expended at orphan sites, costs that were compromised during previous cost recovery efforts, and costs that were previously written off. Indirect costs over and above those that are recoverable under the current indirect rates are also considered not recoverable.

Past Costs Addressed are costs addressed through administrative settlements, Section 107 or 106/107 judicial referrals including settlements for past costs under a CD, decision documents or 10-point settlement analysis documents not to pursue cost recovery, or bankruptcy filing. Depending on the enforcement action, the “Federal Costs Settled - Past” “Past Costs Written Off,” or “Federal Costs Sought - Past” must be entered into WasteLAN.

Recoverable Past Costs include all past costs at the site, regardless of cost recovery status or previous cost recovery efforts. Recoverable costs include direct response costs, indirect costs allocated to the site using the applicable indirect rates, an estimate of contractor program management costs as allocated to the site, and any other costs charged to the site, as indicated by the appropriate Financial Management Division (FMD) system such as, Integrated Financial Management System (IFMS), the Superfund Cost Organization and Recovery Enhancement System (SCORES), or Superfund Cost Recovery Package and Image On-Line System (SCORPIOS). The percentage of recoverable past costs addressed is the amount of past costs addressed compared to the estimated total amount of recoverable past costs.

Definition of Accomplishment:

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites. Cost may be addressed through one or more of the following actions:

Administrative Settlements - Credit is given on the date the Regional office or DOJ receives payment from the PRPs in direct response to a demand letter for voluntary cost recovery, or the date the Regional Administrator or delegatee signs the Administrative Order on Consent (AOC) or Consent Agreement (CA) that recovers 100 percent of the Trust Fund expenditures or settles a claim where the total response cost are less than \$500,000. The accomplishment of the administrative settlement is recorded in WasteLAN as the actual completion date (Actual Complete) of the administrative/voluntary cost recovery (Action Name = Admin/Voluntary Cost Recovery), AOC (Action Name = Admin Order on Consent), or CA (Action Name = Consent Agreement). *If the settlement is compromised and total response costs are more than \$500,000, the AOC must be sent to DOJ for approval prior to signature by the Regional Administrator.*

Section 107 or 106/107 Judicial Referrals - Credit is given on the date of the Regional Administrator’s memo transmitting the referral to DOJ or HQ [Action Name = Litigation (Generic), Section 107 Litigation, or Section 106 & 107 Litigation] as recorded in WasteLAN as the actual start date (Actual Start).

This includes CD settlements (Action Name = Consent Decree) for RD/RA with a cost recovery component and CD settlements for cost recovery only. For CD settlements for RD/RA with a cost recovery component and CD settlements that were not the result of prior litigation, credit is given on the date of the Regional Administrator’s memo transmitting the settlement to DOJ or HQ. This date is reported in WasteLAN as the actual start date (Actual Start) of the CD (Action Name = Consent Decree). For CD settlements that are for cost recovery only and result from a previous litigation referral, the CD actual start date (Actual Start) is not reported in WasteLAN. Only the lodged (SubAction Name = Lodged by DOJ) and entered (SubAction Name = Entered by Court) SubActions, the SubAction actual completion date (Actual Complete), and the actual completion date (Actual Complete) of the CD are recorded. The actual completion date of the CD is the date it is entered by the court.

Decision Documents not to Pursue Cost Recovery - Credit is given when the decision document (Action Name = Cost Recvry Decsn Docmt - No Sue) is signed by the Regional office and recorded in WasteLAN as the actual completion date (Actual Complete). The decision not to pursue cost recovery also may be documented in a 10-point settlement analysis. For both the Cost Recovery Decision Document Not to Sue and the enforcement instrument 10-point settlement analysis, the past costs that will not be recovered (Past Costs Written Off) and the reason(s) the costs were written off should be reported in WasteLAN.

Bankruptcy Filing - Credit is given based on the date that the bankruptcy strategy package is prepared or on the date of the first creditor committee meeting as documented by the summary of the meeting. These dates are reported in WasteLAN as the SubAction “Creditors Committee Meeting” and/or “Bankruptcy Strategy Package” actual completion

dates (Actual Complete). These SubActions are entered with the Claim in Bankruptcy action. For each Claim in Bankruptcy, the “Federal Costs Sought - Past” must be entered into WasteLAN.

Changes in Definition FY 01- FY 02/03:

Replaced “NPL Equivalent” with “Superfund Alternative”.

Special Planning/Reporting Requirements:

This is a program measure. See Definition and Definition of Accomplishment.

t. NUMBER AND AMOUNT OF CERCLA PENALTIES ASSESSED

Definition:

This measure supports the goal of Trust Fund Stewardship by providing information on the amount and number of final CERCLA penalties assessed. The measure identifies monies that are provided for the Trust Fund as a result of penalties assessed for violations of the CERCLA statute. The measure also supports the systematic reporting on the programmatic impacts of compliance and enforcement.

This measure is expressed as the dollar amount of the final assessed penalty under CERCLA. For civil judicial cases, this amount is the penalty assessed against the defendant(s) as specified in the Consent Decree or Court Order entered by the court or agreed to by the defendant(s). For administrative cases, it is the penalty agreed to in the final AOC or assessed directly by EPA under Section 109(a) and (b) of CERCLA.

The number of CERCLA penalties assessed is the number of civil, judicial, or administrative enforcement actions where a penalty was assessed under a CERCLA statute.

Definition of Accomplishment:

The number of CERCLA penalties assessed is the total number of enforcement actions (CDs, AOCs, judgments, or court orders) where a penalty was assessed under a CERCLA statute, including actions that are only for CERCLA or multi-media actions that contain a CERCLA component.

The value of CERCLA penalties assessed is the total dollar amount of penalties assessed under the CERCLA statute for violations of requirements contained in civil, judicial, and administrative enforcement actions. If the enforcement action consists of multi-media actions, this measure will only include the amount that is assessed under the CERCLA statute, to the extent that it can be specified.

Changes in Definition FY 01 - FY 02/03:

None.

Special Planning/Reporting Requirements:

The “Stipulated Penalty Assessed - Amount Imposed” and/or “Statutory Penalty Assessed - Amount Imposed” should be entered into WasteLAN through the Penalty/SEP screens associated with the enforcement instrument. The number and value of CERCLA penalties will be obtained from the Office of Compliance using information reported in the Enforcement Docket System. This is a program measure.

u. NUMBER AND AMOUNT OF CERCLA SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)

Definition:

SEPs are environmentally beneficial projects which a violator agrees to undertake in settlement of an enforcement action, but which the violator is not otherwise legally required to perform. The SEP could be for public health, pollution prevention, pollution reduction, environmental restoration and protection, assessments and audits, environmental compliance promotion, emergency planning and preparedness, or other program-specific projects.

This measure supports the goal of Trust Fund Stewardship by measuring the number and value of SEPs under CERCLA. The measure provides the opportunity for the violator to undertake environmentally beneficial projects that will potentially prevent the creation of additional Superfund sites, thus avoiding the need for using Trust Fund monies for future cleanups. The measure also supports the systematic reporting on the programmatic impacts of compliance and enforcement.

Definition of Accomplishment:

- The number of CERCLA SEPs is the total number of cases where a SEP was agreed upon under a CERCLA statute, including cases that are only for CERCLA or multi-media cases that contain a CERCLA component.
- The value of the CERCLA SEPs agreed upon is the estimated value of the SEP under the CERCLA statute for civil, judicial, and administrative enforcement actions. If the action is a multi-media action, the SEP will be the total value for all media not just media covered under CERCLA.

Changes in Definition FY 01 - FY 02/03:

None.

Special Planning/Reporting Requirements:

The following information should be entered into WasteLAN through the Penalty/SEP screens associated with the enforcement instrument: the SEP Information - EPA Estimated Value and SEP Information - Category. The number and value of SEPs agreed upon under CERCLA will be obtained from the Office of Compliance using the information reported in the Enforcement Docket System. This is a program measure.

v. COMPLIANCE MONITORING: NONCOMPLIANCE WITH ACTIVE ENFORCEMENT INSTRUMENT FOR RESPONSE AND ENFORCEMENT ACTIONS

Definition:

This measure identifies the number and percentage of enforcement instruments where PRPs have not complied with a requirement of the instrument, and where the EPA has either taken no enforcement action, planned enforcement action, or taken action to address violations. Enforcement instruments include only CDs, AOCs, and UAOs with a response action component. "Noncompliance" is defined as the PRP being in violation of a provision(s) of an enforcement instrument, or a provision(s) of an incorporated reference document such as a work plan.

Definition of Accomplishment:

This measure is to be reported on a quarterly fiscal year basis for each type of formal enforcement instrument as follows:

- **Consent Decrees** - The number of active lodged CDs (Action Name = Consent Decree) with response action provisions (Response Actions Pd by Parties) where the settling PRP has failed or refused to comply with one or more provisions of the active entered CD, or with provisions of any other document incorporated by reference (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, or In Violation - Action

Taken). The actual date (Actual Complete) the CD is entered (Sub Action Name = Entered by Court) is the earliest date that could trigger the settling PRP's response action obligation. The measure will be reported by fiscal year and quarter (Current FY/Q).

The following universes will be reported (regionally and nationally): a) the number and percentage of active signed CDs with response action provisions that qualify as being "In Violation" (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, or In Violation - Action Taken) calculated relative to the total number of active CDs with response action provisions; b) the number and percentage of active entered CDs with response action provisions in violation, where action is taken (Overall Compliance Status = In Violation - Action Taken) calculated relative to the total number of active entered CDs with response action provisions where there are violations (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, and In Violation - Action Taken).

- ***Administrative Orders on Consent (AOCs)*** - The number of active signed AOCs (Action Name = Administrative Order on Consent) with response action provisions (Response Actions Pd by Parties) where the PRP has failed or refused to comply with any provision of the AOC, or provisions of any other document incorporated by reference (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, or In Violation - Action Taken). The date the Regional Administrator signs the AOC (Actual Complete) is the earliest date that could trigger the settling PRPs response action obligation. The measure will be reported by fiscal year and quarter (Current FY/Q).

The following universes will be reported (regionally and nationally): a) the number and percentage of active signed AOCs with response action provisions that qualify as being "In Violation" (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, or In Violation - Action Taken) will be calculated relative to the total number of active signed AOCs with response action provisions; b) the number and percentage of active signed AOCs with response action provisions in violation, where action is taken (Overall Compliance Status = In Violation - Action Taken) calculated relative to the total number of active signed AOCs with response action provisions where there are violations (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, and In Violation - Action Taken).

- ***Unilateral Administrative Orders (UAOs)*** - The total number of active UAOs (Action Name = Unilateral Administrative Order) with response action provisions (Response Actions Pd by Parties) where the PRP has failed or refused to comply with any provision of the UAO, or provisions of any other document incorporated by reference (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, or In Violation - Action Taken). The date the Regional Administrator signs the UAO (Actual Complete) is the earliest date that could trigger the settling PRPs response action obligation. The measure will be reported by fiscal year and quarter (Current FY/Q).

The following universes will be reported (regionally and nationally): a) the number and percentage of active signed UAOs with response action provisions that qualify as being "In Violation" (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, or In Violation - Action Taken) will be calculated relative to the total number of active signed UAOs with response action provisions; b) the number and percentage of active signed UAOs with response action provisions in violation, where action is taken (Overall Compliance Status = In Violation - Action Taken) calculated relative to the total number of active signed UAOs with response action provisions where there are violations (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, and In Violation - Action Taken).

An enforcement instrument is active until the provisions of the instrument or another document incorporated by reference is completed including payment provisions and monitoring (with the exception of any activity related to record retention). (The CD, AOC, or UAO has an Overall Compliance Status of "Closed Order/Settlement"; and the SubAction = Closed

Order or Settlement, or the SubAction = Closed Order or Settlement with Potential for Penalty Claim has an Actual Completion Date). In addition, a UAO that is converted to a CD is no longer active.

Changes in Definition FY 01 - FY 02/03:

None.

Special Planning/Reporting Requirements:

This is a program measure. Regions must enter the Current FY/Q and the Overall Compliance Status for all enforcement instruments on a quarterly basis. The Compliance Status is based on the compliance status of the individual milestones of the enforcement instrument.

The universes of enforcement instruments where PRPs are in compliance (Overall Compliance Status = In Compliance) in violation (Overall Compliance Status = In Violation - No Action Planned, or In Violation - Action Planned, or In Violation - Action Taken), or compliance status is unknown (Overall Compliance Status = Unknown) with respect to the requirements of the instrument, will be calculated quarterly.

w. *USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)*

Definition:

This measure reports the number of sites where ADR techniques are employed in an attempt to reach settlement under CERCLA or to resolve disputes over cleanup standards and Applicable or Relevant and Appropriate Requirements (ARARs). Sites using ADR tools are divided into two categories: sites where the Agency employs and funds ADR in the CERCLA process; and sites where the Agency supports private party use of ADR in the CERCLA process. It does not include cases where the private parties use ADR without the Agency's support. This measure includes use of ADR in disputes regarding allocation of liability; in disputes with PRPs regarding alleged noncompliance with a settlement agreement; and in disputes with States and tribes regarding ARARs and cleanup standards. This measure will report site-specific use of ADR.

Definition of Accomplishment:

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites for ADR activities when:

- ***Allocation of Shares of Responsibility*** - The parties involved choose a neutral allocator. The date on which the allocator is chosen is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of "Allocation" should also be entered.
- ***Arbitration*** - The parties involved in binding or advisory negotiation (in a judicial setting) choose an arbitrator. The date on which the arbitrator is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of "Arbitration" should also be entered.
- ***Convening*** - A neutral third party is selected to organize disputants for negotiations, assist them in the decision to use ADR, and assist in the selection of an ADR professional. The date on which the neutral third party is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of "Convening" should also be entered.
- ***Fact Finding*** - A specialized neutral party with subject matter expertise is selected to resolve technical or factual issues. The date that the specialized neutral party is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of "Fact Finding" should also be entered.

- **Mediation** - The parties select a neutral third party with no decision-making authority to assist during non-binding negotiations. The date on which the neutral party is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of "Mediation" should also be entered.
- **Mini-Trial** - The involved parties begin the mini-trial. The date on which the mini-trial begins is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of "Mini-Trial" should also be entered.
- **Neutral Evaluation** - A neutral party is selected to assist a negotiation team in evaluating the potential for settlement or use of ADR professionals. The date on which the neutral party is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of "Neutral Evaluation" should also be entered.
- **Settlement Judge** - A settlement judge (other than the one hearing the case) is selected (or agreed upon) to act as a mediator during the negotiation and settlement discussions of the parties. The date on which the settlement judge is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of "Settlement Judge" should also be entered.

Changes in Definition FY 01 - FY 02/03:

Replaced "NPL Equivalent" with "Superfund Alternative".

Special Planning/Reporting Requirements:

This is a Federal enforcement-lead (FE) action with an action name of "Alternative Dispute Resolution". The response actions being discussed during the ADR process ("Response Actions Addressed") and the ADR Process may be entered into WasteLAN. Credit will be based on the start date (Actual Start) of the ADR (Action Name = Alternative Dispute Resolution). This is a program measure.

x. NUMBER OF SETTLEMENTS WHERE EPA SETTLED BASED ON ABILITY-TO-PAY DETERMINATIONS

Definition:

The measure will help assess the extent to which EPA is using ability-to-pay determinations to achieve its goal of Enforcement Fairness. The measure will report the number of administrative or judicial settlements that are reached under CERCLA with PRPs qualified as limited ability-to-pay parties. This type of settlement results in: (1) PRPs paying less than their respective portion of the cost for site cleanup based on an ability-to-pay determination; (2) Payment over time for parties with limited ability to raise annual revenues; or (3) Parties providing in-kind service in lieu of cash payments.

Definition of Accomplishment:

Total ability-to-pay settlements are counted as follows:

- When an AOC (Action Name = Admin Order on Consent) or Consent Agreement (CA) (Action Name = Consent Agreement) with the ability-to-pay PRPs is signed by the Regional Administrator or delegatee and reported in WasteLAN as the actual completion date (Actual Complete).
- When the Regional Administrator signs the memorandum transmitting the CD (Action Name = Consent Decree) signed by the ability-to-pay parties (and the Regional Administrator) to DOJ or HQ as reported in WasteLAN as the actual start date (Actual Start).

Changes in Definition FY 01- FY 02/03:

In FY 00, OSRE tracked CAs under this measure but had not previously included them in the definition.

Special Planning/Reporting Requirements:

This is a program measure. An Enforcement Instrument Categories Selected of “Ability to Pay” needs to be entered into WasteLAN .

y. PROSPECTIVE PURCHASER AGREEMENTS (PPAs) -ASSESSED AND FINALIZED**Definition:**

In December 2001, CERCLA was amended through enactment of Public Law 107-118, titled the Small Business Relief and Brownfield Revitalization Act (“Brownfields Amendments”). Among other things, the Brownfields Amendments provide a limitation on liability for persons who qualify as bona fide prospective purchasers. Congress’ intent in enacting this provision was to remove certain liability barriers to purchases of property and encourage redevelopment. While EPA believes the necessity for PPAs has been largely addressed by congressional action, the Agency recognizes that in limited instances the public interest will be served by entering into PPAs or some other form of agreement. This measure, therefore, will continue to report progress toward both the goals of enforcement fairness, and redevelopment of contaminated properties in these limited instances. This measure will quantify the number of prospective purchaser requests received and addressed by the Agency and the number of prospective purchaser agreements signed.

For the purpose of GPRA reporting, this measure will count:

- 1) The number of written requests (containing all necessary information required by EPA) for prospective purchaser agreements received by the Agency.
- 2) The number of written requests (with all necessary information required by EPA) that the Agency has denied, or the prospective purchasers have withdrawn.
- 3) The number of final proposed settlements sent to prospective purchasers for signature, in the form of Administrative Orders on Consent (AOC), Consent Agreements (CA), or Consent Decrees (CD).
- 4) The number of finalized settlement agreements (AOCs, CAs, CDs) that include prospective purchaser provisions.

The program target is to review and assess (make a determination) 100% of the PPA requests. *The percentage will be calculated using:*

- a) The number of written prospective purchaser requests addressed during the fiscal year through denial, withdrawal, or a final proposed settlement sent to a prospective purchaser for signature; versus,
- b) The number of written prospective purchaser requests (with all necessary information required by EPA) received by EPA within the first nine months of the current fiscal year; and all unconcluded/ongoing prospective purchaser requests (with all necessary information required by EPA) received prior to the beginning of the current fiscal year.

Definition of Accomplishment:

Credit is given at non-Federal facility NPL, Superfund Alternative, non-NPL sites, and Brownfield properties:

- Prospective Purchaser Requests Assessed: This is the point at which the Agency has completed its work towards addressing a request for a prospective purchaser agreement, and the PPA request has been received from the potential or actual purchaser, with all necessary information required by EPA (Action Name = PPA Assessment and SubAction Name = All Necessary Information Received by EPA and the Action Actual Start Date and SubAction Actual Complete Date are entered into WasteLAN). The request has been assessed when the Agency denies the request, or the prospective purchaser withdraws the request, or the Agency has written and forwarded a final proposed settlement to the prospective purchaser for signature (Action Actual Complete with Action Qualifier = Request

Denied or Withdrawal of Application by Requesting Party; or SubAction Name = Final Proposed Settlement Sent to Prospective Purchaser and SubAction Actual Complete Date).

- Prospective Purchaser Agreement: This is the completion of a PPA based on the date (Actual Complete) the Administrative Order on Consent (AOC) or Consent Agreement (CA) (Action Name = Admin Order on Consent or Consent Agreement) with a PPA component is signed by the Regional Administrator or delegatee or the date (Actual Start) the CD (Action Name = Consent Decree) with a PPA component is referred by the Regional Administrator or delegatee to either DOJ or HQ. Regions also must enter the Enforcement Instrument Category to indicate a PPA (Enforcement Instrument Categories Selected = Prospective Purchaser Agreement).

Changes in Definition FY 01- FY 02/03:

Brownfield properties are added to this definition. A written request for a prospective purchaser agreement replaces a formal written request. PPAs assessed are now a GPRA annual performance reporting measure and program target. Replaced "NPL Equivalent" with "Superfund Alternative". Changed Definition to reflect the Small Business Liability Relief and Brownfields Revitalization Act.

Special Planning/Reporting Requirements:

For each settlement, the region should enter the following information into WasteLAN: "Work PRP Will Perform - Value" and/or "Federal Costs Settled - Future" and "Response Actions Pd by Parties;" and/or "Federal Costs Settled - Past", "Response Actions Reimbursed", and/or "Other Relief Achieved" of "Other Activities for Cost Recovery"; and an Enforcement Instrument Categories Selected of "Prospective Purchaser Agreement". PPA assessments are a GPRA annual performance reporting measure and program target. The number of PPAs signed is a program measure and reported under GPRA. When the capability exists in WasteLAN, Regions should track PPAs - Assessed and Finalized for Brownfields electronically in the Brownfields area of WasteLAN.

z. ISSUANCE OF COMFORT/STATUS LETTERS

Definition:

This measure supports the Superfund Reform goals of Brownfields cleanup and redevelopment, by identifying situations where the Agency can provide information to parties interested in purchasing, developing, or operating on previously used properties and provide some assurance regarding the potential for an EPA action at the property. Comfort/status letters are intended solely for informational purposes and only communicate EPA's intent with regard to enforcement or response authorities. Comfort/status letters do not provide a release from CERCLA liability, and therefore, are not considered no action assurances. All responses to solicitations for information on EPA's involvement or potential involvement or interest in a site or property qualify as comfort/status letters.

Definition of Accomplishment:

The start date for this action is the date that a written request is received by the Agency for a comfort/status letter from an interested party. A comfort/status letter is accomplished (Actual Complete) the day it is signed by the appropriate Regional Official.

Changes in Definition FY 01 - FY02/03:

None.

Special Planning/Reporting Requirements:

This is a program measure. Regions should track the site-specific issuance of comfort/status letters electronically in WasteLAN.

aa. ORPHAN SHARE - EPA OFFER AND COMPENSATION**Definition:**

This measure reports on EPA efforts to compensate parties for the portion of the response costs attributable to insolvent and defunct parties (orphan share).

This measure includes negotiations and settlements for **RI/FS**, RD/RA, time-critical (TC) or non time -critical (NTC) removals, or appropriate cost recovery cases. This measure will report: 1) the number of negotiations where EPA offered to compensate for a portion of the orphan share; 2) the Maximum Amount Appropriate for Compensation (MAAC) under the 1996 Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals and the 1997 Cost Recovery Addendum (dated: September 30, 1997); 3) the actual amount of compensation offered; 4) the number of settlements where EPA compensated for a portion of the orphan share; 5) the actual dollar amount of the orphan share compensated by EPA; and 6) the actual date the region made the offer.

Orphan share compensation offers are subject to the adequacy of cleanup program funding, and eligibility requirements under the policies. Orphan share compensation is **not** available at sites where there are no orphan parties, federal facilities, sites where every PRP is liable as a current or former owner and/or operator and the region has not identified any generator/transporter (i.e. “owner-operator only” sites), or sites where PRPs are performing work pursuant to a UAO, unless such parties are willing to convert the UAO to a CD. All other sites are eligible sites for purposes of this measure for work (i.e., Remedial Design/Remedial Action and Non-Time Critical Removal) negotiations at NPL sites). The method for determining the appropriate compensation to be offered by EPA is provided in the “Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals” dated June 3, 1996 and the 1997 Cost Recovery Addendum (dated: September 30, 1997). The MAAC should not exceed the lesser of the following ceilings: 1) the orphan share; 2) the sum of all EPA unreimbursed past costs and EPA’s projected costs of overseeing the design and implementation of the Record of Decision (ROD) remedy, TC or NTC removal costs; or 3) 25 percent of the projected ROD remedy, TC or NTC removal costs at the site.

It should be noted that orphan share compensation at **RI/FSs**, time critical removals and non-NPL sites/Superfund Alternative (formerly NPL-Equivalent) sites is discretionary under the 1996 Orphan Share Policy. Although Regions should offer orphan share compensation during settlement negotiations for RD/RA and non-time critical removal actions at NPL sites, it is not required to offer orphan share compensation at time critical removals and non-NPL sites/ Superfund Alternative sites.

Definition of Accomplishment:

Credit is given at eligible non-Federal facility non-owner/operator only NPL, Superfund Alternative, and non-NPL sites for negotiations where EPA offered to compensate for a portion of the orphan share. In order to receive credit for orphan share compensation in any case, at a minimum, the PRP must have been informed that part of the Federal compromise at the site is attributable to orphan share. In negotiations for work, the PRP must be informed about the amount of the Federal compromise attributable to orphan share under the MAAC analysis. Credit is given where EPA **offered to compensate** for orphan share when:

- The General Notice Letter (GNL) (for removals), first Special Notice Letter (SNL), Letter for Orphan Share Compensation (for on-going negotiations), or Memorandum for the Record for oral offers is signed by the appropriate EPA official for the site or operable unit (OU). The Memorandum of Records for oral offers may be, for example, a memorandum to the case file memorializing the oral offer. This date is reported in WasteLAN as the actual start date (Actual Start) of negotiations [Action Name = **RI/FS Negotiations**, RD/RA Negotiations, Removal Negotiations, or Negotiations (Generic)] or the completion date (Actual Complete) of the Letter for Orphan Share Compensation SubAction [SubAction Name = Letter for Orphan Share Compensation] or Memorandum for the Record SubAction [SubAction Name = Memorandum for the Record]; or

OSWER Directive 9200.3-14-1G-P

- A Section 122(a) waiver of SNL signed by the appropriate EPA official with the intent to pursue negotiations without moratorium procedures. This date is reported in WasteLAN as the actual start date (Actual Start) of negotiations [Action Name = **RI/FS Negotiations**, RD/RA Negotiations, Negotiations (Generic), or Removal Negotiations]; or
- A Demand Letter, Letter for Orphan Share Compensation (for on-going negotiations), or Memorandum for the Record for oral offers for cost recovery signed by the appropriate EPA official is sent to the parties. This date is reported in WasteLAN as the actual start date (Actual Start) of negotiations [Action Name = Cost Recovery Negotiations] or the completion date (Actual Complete) of the Letter for Orphan Share Compensation SubAction [SubAction Name = Letter for Orphan Share Compensation] or Memorandum for the Record SubAction [SubAction Name = Memorandum for the Record].

Credit is given at eligible non-Federal facility non-owner/operator only NPL, Superfund Alternative, and non-NPL sites where EPA **compensated** for a portion of the Orphan Share as follows:

- A CD (Action Name = Consent Decree) and a 10-point settlement analysis for RD or RA is signed under Section 106, 106/107, 104(a), 104(b), or for cost recovery only under Section 107. The date when the Regional Administrator signs the memorandum transmitting the CD, signed by the parties and the Regional Administrator, to DOJ is reported in WasteLAN as the actual start date (Actual Start); or
- An AOC (Action Name = Admin Order on Consent) for **RI/FS**, a time-critical or NTC removal, or RD only is signed by the Regional Administrator or delegatee. The date on which the AOC is signed is reported in WasteLAN as the actual completion date (Actual Complete). For AOCs that are amended to include a time-critical or NTC removal, or RD only, the SubAction “Enforcement Action Amended” and the SubAction actual completion date (Actual Complete) must be entered into WasteLAN; or
- An AOC or Consent Agreement (CA) (Action Name = Admin Order on Consent or Consent Agreement) for cost recovery under Section 122(h) is signed by the Regional Administrator or delegatee. The date on which the AOC or CA is signed is reported in WasteLAN as the actual completion date (Actual Complete). For AOCs or CAs that are amended to include cost recovery, the SubAction “Enforcement Action Amended” and the SubAction actual completion date (Actual Complete) must be entered into WasteLAN.

Changes in Definition FY 01- FY 02/03:

Add Memorandum for the Record for oral offers. Orphan share compensation offered is now a GPRA annual reporting measure and program target. Replaced “NPL Equivalent” with “Superfund Alternative”. **Added negotiations and settlements for RI/FS to the Definition and Definition of Accomplishment.**

Special Planning/Reporting Requirements:

Orphan Share Compensation Offered for **work** (i.e. Remedial Design/Remedial Action and Non-Time Critical Removal) negotiations at NPL sites is a GPRA annual performance reporting measure and program target. The program target is to offer orphan share compensation at 100% of eligible sites in work (i.e. Remedial Design/Remedial Action and Non-Time Critical Removal) negotiations at NPL sites. Orphan Share Compensated is a program measure. The applicable “Response Actions Pd by Parties,” must be entered into WasteLAN. Indicators on the existence of an orphan share at a site, including whether the orphan share policy applies for work at a site, an orphan share compromise was offered or compensated by EPA, the MAAC and ceiling type, the past and anticipated future costs offered and compensated by EPA will be entered into WasteLAN.

bb. ISSUE CLEANUP ORDERS TO PARTIES IN AN EQUITABLE MANNER**Definition:**

This measure supports the Superfund Reform goal of enforcement fairness by seeking to ensure reasonable and fair issuance of Unilateral Administrative Orders (UAOs) in accordance with the memorandum dated August 2, 1996. That memo established procedures for documenting reason(s) for excluding certain parties from CERCLA 106 UAOs or, in the case of late-identified PRPs, for not issuing such UAOs at all. The Agency's policy on who should receive UAOs remains that such orders should be issued to the "largest manageable number" of PRPs, following consideration of the three major factors listed below.

- Evidence of the PRP's potential liability,
- Financially viability of PRP, and
- PRP's contribution to the site (e.g., volumetric contribution or contribution in the form of prior work).

Definition of Accomplishment:

This measure will include non-Federal facility NPL, Superfund Alternative, and non-NPL sites. This measure will report:

- The number of Unilateral Administrative Orders issued pursuant to CERCLA section 106 at the site. Credit is given on the date a UAO is signed by the Regional Administrator (or delegatee), regardless of the nature of the response action (e.g., RD/RA, groundwater monitoring activities post-ROD, institutional controls, time-critical or NTC removals). This date is reported in WasteLAN as the actual completion date of the order (Action Name = Unilateral Admin Order).
- The total number of parties receiving the UAO.
- The number of parties (if any) excluded from the UAO.

The following information must be entered into WasteLAN:

- PRPs that were issued the UAO (Parties Issued UAO); and
- The response actions to be implemented pursuant to the UAO (Response Actions Pd by Parties).

In addition, the following information must also be entered in WasteLAN:

- PRPs that were excluded from the UAO (Parties Considered, Not Issued); and
- One or more of the following reasons why the PRP was not issued a UAO:
 - Financially Non-Viable;
 - Evidence Issues;
 - Relatively Minor Contributions to Site Conditions;
 - Already Contributed "Fair Share";
 - Manageability Concerns (for exceptional cases only); and
 - Federal PRP awaiting DOJ concurrence.

Changes in Definition FY 01 - FY 02/03:

Replaced “NPL Equivalent” with “Superfund Alternative”.

Special Planning/Reporting Requirements:

This is a program measure.

cc. DE MICROMIS SETTLEMENTS AND NUMBER OF PARTIES

Definition:

This measure reports the total number of administrative or judicial settlements that are reached solely under Section 122 of SARA, with PRPs qualified as de micromis. It is rather unusual in that it measures success inversely. The lower the number of de micromis settlements, the more successful the Agency’s de micromis policy.

Definition of Accomplishment:

De micromis settlements at non-Federal facility NPL, Superfund Alternative, and non-NPL sites include:

- An AOC (Action Name = Admin Order on Consent) signed by the Regional Administrator or delegatee, as reported in WasteLAN, as the actual completion date (Actual Complete).
- When the Regional Administrator signs the memorandum transmitting the Consent Decree (Action Name = Consent Decree), signed by the de micromis parties and the Regional Administrator to DOJ or HQ, as reported in WasteLAN, as the actual start date (Actual Start).

The number of signatories to the settlement is system generated in WasteLAN from the identification of the PRPs associated with the settlement.

The following information should be entered into WasteLAN:

- Enforcement Instrument Categories Selected of “De Micromis”;
- PRPs that signed settlement (Parties Associated with Action, Party Name).

To indicate the de micromis parties that signed the settlement, the following information must be entered for each party on the Involvement screen:

- Basis of Liability of “De Micromis Party”; and
- Involvement Type of “Generator” or “Transporter”.

Changes in Definition FY 01 - FY 02/03:

Replaced “NPL Equivalent” with “Superfund Alternative”.

Special Planning/Reporting Requirements:

While EPA will enter into de micromis settlements when small parties are threatened with suit, the ultimate measure of success of this policy will be that de micromis parties are no longer pursued and there is no need to enter into such settlements (see above). This is a program measure.

The number of signatories to the settlement will be system generated from the identification of the parties associated with the settlement.

dd. PRP OVERSIGHT ADMINISTRATION**Definition:**

Through the Superfund Reform on the Administration of PRP Oversight (OS), EPA recognizes the value of working together with PRPs with whom the Agency has settlement agreements as a means to promote appropriate oversight that ensures the development and implementation of protective cleanups; gives careful consideration to the associated costs being charged to PRPs; and maximizes EPA recovery of oversight cost. This measure reports EPA's efforts to work with PRPs to maximize the effectiveness and efficiency of EPA oversight and to send timely bills for oversight.

This measure applies to all PRPs at non-Federal facility NPL, Superfund Alternative, and non-NPL sites who:

- Are conducting, under Federal oversight, the non-time-critical removal action (NTCRA), remedial investigation/feasibility study (RI/FS), remedial design (RD), or remedial action (RA) phase of a cleanup, AND
- Have an Administrative Order on Consent (AOC), Consent Decree (CD), or other settlement document in place with EPA that provides for payment of oversight costs.

Definition of Accomplishment:

The annual accomplishment target shall be based on the number of agreements (as described in 2 above) in place for RP-lead events that will take place during the fiscal year. The regions will accomplish the following objectives for each PRP or group of PRPs that has such an agreement and is required to pay oversight costs:

The date of the accomplishment for this target is the later of the dates documenting completion of each of the actions below. Credit is given based on the date that:

- An offer (personal contact is strongly encouraged) is made to PRPs to discuss EPA's oversight expectations for upcoming activities. This date is reported in WasteLAN as the SubAction "Offer to Discuss EPA Oversight Expectations w/ PRPs" actual completion date (Actual Complete) ; AND
- An oversight bill consistent with the enforcement instrument is issued to PRPs or an accounting of costs is provided to PRPs. This date is reported in WasteLAN as the SubAction "Issuance of Oversight Bill" or as "Accounting of Oversight Costs Incurred" actual completion date (Actual Complete). If the settlement document is signed or referred within the current fiscal year only the "Offer to discuss EPA Oversight Expectations with PRPs" subaction is required.

Changes in Definition FY 01 - FY 02/03:

Changes made to include settlement documents that are signed or referred within the current fiscal year. Replaced "NPL Equivalent" with "Superfund Alternative".

Special Planning/Reporting Requirements

This is a program target. As part of the annual work planning process, HQ will identify a potential universe of planned or ongoing RP-lead actions for which PRPs have entered into agreements with EPA to conduct work. For the purposes of this measure only, Headquarters shall assume, unless otherwise informed by the regions, that PRPs that have entered into agreements with EPA will receive annual oversight bills unless the settlement was entered into in the current fiscal year. In that event no bill is required; however, the region will be expected to offer to meet with the PRPs to discuss oversight expectations. The regions will identify those actions for which PRPs are required to pay oversight costs. The regions and HQ shall then mutually determine the annual accomplishment target for this measure.

ee. SETTLEMENTS DESIGNATING DEPOSITS TO SPECIAL ACCOUNTS

Definition:

This measure will assess the extent to which EPA is able to direct the deposit of settlement funds into Special Accounts under CERCLA Section 122(b)(3), in its efforts to increase fairness and promote PRP settlements. EPA is able to retain and apply the interest from these accounts to clean up the site at which the settlement occurred. Funds deposited in Special Accounts are immediately accessible for response costs, but may only be used to support response actions at the site(s) covered by the settlement. Funds deposited into a Special Account may be the result of response costs achieved under: *de minimis*, ability to pay, bankruptcy, cashout, Prospective Purchaser Agreement (PPAs), or other settlements.

For all CERCLA settlements where PRPs agree to make cash payments toward response costs at a site (i.e. cashout and/or cost recovery settlements), the measure will report the following:

- The total number of cashout and cost recovery settlements, and the estimated amount of response costs achieved from those settlements;
- The number of settlements which designate funds to Special Accounts for response costs, and the percentage of these settlements compared to the total number of cashout and cost recovery settlements; and
- The amount of funds designated to Special Accounts by the settlement for response costs and the percentage of these funds compared to the total amount of response costs achieved from all cashout and cost recovery settlements.

Definition of Accomplishment:

This measure counts any settlement where there is a payment provision where funds will be deposited in a Special Account as follows:

- An Administrative Order on Consent (AOC) or Consent Agreement (CA) (Action Name = Admin Order on Consent or Consent Agreement) that includes a payment provision where funds will be placed in a special account. The date on which the Regional Administrator or delegatee signs the AOC or CA is reported in WasteLAN as the actual completion date (Actual Complete); or
- A Consent Decree (CD) (Action Name = Consent Decree) referred to DOJ/HQ under Section 106, 107, or 106/107 that includes a payment provision where funds will be placed in a Special Account. The date on which the Regional Administrator signs the memorandum transmitting the CD, signed by the parties and the Regional Administrator to DOJ or HQ is reported in WasteLAN as the actual start date (Actual Start). For CD settlements that are for cost recovery only and result from a previous litigation referral, regions should not add a CD start date (Actual Start). Only the lodged (SubAction = Lodged by DOJ) and entered (SubAction name = Entered by Court) SubActions, their actual completion dates (Actual Complete), and the actual completion date (Actual Complete) of the CD will be recorded. The actual completion date of the CD is the date it is entered by the court. If the actual completion date for the "Lodged by DOJ" SubAction exists, credit will be given in the FY identified by this completion date.

Changes in Definition FY 01 - FY 02/03:

Modified definition to include the deposit of past costs into Special Accounts.

Special Planning/Reporting Requirements:

This is a program measure. Data that must be entered into WasteLAN for these settlements include:

- Federal Costs Settled - Past (for Cost Recovery Settlements);

- Federal Costs Settled - Future (for Cashout Settlements);
- Enforcement Instrument Categories Selected of “Cashout” (for Cashout Settlements);
- Response Actions Pd by Parties (for Cashout Settlements);
- Deposit to EPA Special Account; and
- Special Account Deposit Provision Flag.

ff. DEPOSITS INTO SPECIAL ACCOUNTS

Definition:

This measure will report the amount of all actual deposits into Special Accounts. This measure will be used to answer the question: How much money has EPA deposited into Special Accounts for response actions at Superfund sites? Funds deposited into a Special Account may be the result of response costs achieved under: *de minimis*, ability to pay, bankruptcy, cashout, Prospective Purchaser Agreement (PPAs), or other settlements. Funds deposited in Special Accounts are immediately accessible for response costs at the site(s) covered by that Special Account. The source of the information reported under this measure is periodic extraction of information from EPA’s Integrated Financial Management System (IFMS).

The measure will report the following:

- For each site for that fiscal year, the total amount of actual deposits into Special Accounts; and
- For each region for that fiscal year, the total amount of actual deposits into Special Accounts.

Definition of Accomplishment:

Regions transfer the funds to the Cincinnati Financial Management Center (CFMC) for deposit in the Special Account. Deposit dates are recorded by CFMC in IFMS. CFMC extracts data from IFMS for tracking and reporting purposes. This measure counts all deposits made at the time that Special Accounts are established and any subsequent deposits made to these accounts as follows:

- The date on which a Special Account is established by the CFMC with the initial deposit amount; and
- The date on which any subsequent deposits are made by CFMC to existing Special Accounts.

Changes in Definition FY 01 - FY 02/03:

None.

Special Planning/Reporting Requirements:

This is a program measure. Data that must be entered into IFMS includes:

- Amount of deposits into Special Accounts; and
- The date of deposits into Special Accounts.

gg. SETTLEMENTS DESIGNATING DISBURSEMENTS FROM SPECIAL ACCOUNTS TO PRPS

Definition:

This measure will quantify the number of settlements in which EPA has agreed to disburse Special Account funds to PRPs for response actions at the site where the Special Account funds were collected. Response actions can be removal or remedial, under administrative or judicial settlements (under Agency guidance, Special Account funds are not available to parties performing work under a UAO).

For all CERCLA settlements where PRPs agree to conduct response actions at the site for which the Special Account was created, the measure will report the following:

- The number of response settlements which designate disbursement from Special Accounts to PRPs who conduct the response action; and
- The amount of funds designated to be disbursed from Special Accounts to PRPs in response action settlements.

Definition of Accomplishment:

This measure counts all settlements where there is a provision for disbursement of Special Account funds to PRPs as follows:

- A signed Consent Decree (CD) (Action Name = Consent Decree) is referred to DOJ/HQ under Section 106 or 106/107 that includes a disbursement provision. The date on which the Regional Administrator signs the memorandum transmitting the CD, signed by the parties and the Regional Administrator to DOJ or HQ is reported in WasteLAN as the actual start date (Actual Start); or
- An Administrative Order on Consent (AOC) or Consent Agreement (CA) (Action Name = Admin Order on Consent or Consent Agreement) that includes a disbursement provision is signed. The date on which the Regional Administrator or delegatee signs the AOC or CA is reported in WasteLAN as the actual completion date (Actual Complete).

Changes in Definition FY01 - FY02/03:

None.

Special Planning/Reporting Requirements:

This is a program measure. Data that must be entered into WasteLAN for these settlements include:

- Response Actions Paid by Parties;
- Work PRP Will Perform - Value;
- Paid from Special Account; and
- Special Account Disbursement Provisions Flag.

hh. DISBURSEMENTS FROM SPECIAL ACCOUNTS FOR RESPONSE ACTIONS**Definition:**

This measure will assess the extent to which EPA uses Special Account funds for site cleanup by reporting the amount of all actual disbursements from Special Accounts for response actions. This measure will be used to answer the question: How much money has EPA disbursed from Special Accounts for response actions at Superfund sites? This measure will capture disbursements to all recipients, whether for PRP-lead, State-lead, or EPA-lead response actions since Special Account funds can be used to pay PRPs', States', and EPA's response costs .

This measure has sub-measures, which will report the amount of all actual disbursements from Special Accounts to PRPs, EPA, and States for response actions. The PRP sub-measure will be used to answer the question: How much money has EPA disbursed from Special Accounts to PRPs for response actions at Superfund sites? This sub-measure follows the measure entitled, "Settlements Designating Disbursements from Special Accounts to PRPs." Together, these answer the question: Of the amount designated in settlements to be disbursed to PRPs for response actions, what is the amount actually disbursed to PRPs? This measure and this sub-measure will be used to answer the question: Of the total amount disbursed from Special Accounts for response actions, what percentage is disbursed to PRPs? The State sub-measure will be used to report the amount of money disbursed from Special Accounts to States for response actions at Superfund sites. The EPA sub-measure will be used to report the amount of money disbursed from Special Accounts to EPA for response actions at Superfund sites. The latter sub-measure will include amounts given to EPA which the Agency subsequently sends to entities other than PRPs and States for response actions at Superfund sites.

The source of the information reported under this measure is periodic extraction of information from EPA's Integrated Financial Management System (IFMS).

The measure will report the following:

- For each site for that fiscal year, the total amount of actual disbursements from Special Accounts for response actions;
- For each site for that fiscal year, the total amount of actual disbursements from Special Accounts to PRPs for response actions;
- For each site for that fiscal year, the total amount of actual disbursements from Special Accounts to States for response actions;
- For each site for that fiscal year, the total amount of actual disbursements from Special Accounts to EPA for response actions;
- For each region for that fiscal year, the total amount of actual disbursements from Special Accounts for response actions;
- For each region for that fiscal year, the total amount of actual disbursements from Special Accounts to PRPs for response actions;
- For each region for that fiscal year, the total amount of actual disbursements from Special Accounts to States for response actions; and
- For each region for that fiscal year, the total amount of actual disbursements from Special Accounts to EPA for response actions.

Definition of Accomplishment:

Regions make disbursements from Special Accounts. Disbursements are recorded by the regions in IFMS. CFMC extracts data from IFMS for tracking and reporting purposes. This measure counts all disbursements made from Special Accounts for response actions as follows:

- The date on which the region disburses funds from the Special Account as recorded in IFMS.

The three sub-measures count all disbursements from Special Accounts to PRPs, States, and EPA for response actions as follows:

- The date on which the region disburses funds to PRPs from Special Accounts as recorded in IFMS.
- The date on which the region disburses funds to States from Special Accounts as recorded in IFMS.
- The date on which the region disburses funds to EPA from Special Accounts as recorded in IFMS.

Changes in Definition FY 01- FY 02/03:

Modified definition to include disbursements from Special Accounts to States and EPA for response actions.

Special Planning/Reporting Requirements:

This is a program measure. Data that must be entered into IFMS includes:

- Actual disbursements from Special Accounts for response actions;
- Actual disbursements from Special Accounts to PRPs for response actions;
- Actual disbursements from Special Accounts to States for response actions; and
- Actual disbursements from Special Accounts to EPA for response actions. (This sub-measure is derived by subtracting the sum of the disbursements to PRPs and States from the disbursements from Special Accounts for response actions.)
- The dates of disbursements from Special Accounts.

C.B SUBJECT MATTER EXPERTS

The following exhibit identifies the subject matter experts for Appendix C (Enforcement).

EXHIBIT C.2 SUBJECT MATTER EXPERTS

Subject Matter Expert	Subject Area	Phone #
Mary Bell	Enforcement Data	(202) 564-2256
Scott Blair	Enforcement Data	(202) 564-6023
Dan Dickson	Enforcement Data	(202) 564-6041
Dela Ng	Enforcement Data	(202) 564-6073